

Missouri families adopting a special needs child may be eligible to receive a Missouri Adoption Tax Credit for nonrecurring adoption expenses. These expenses can be claimed up to \$10,000 if the adopting parent(s) has not been reimbursed by federal, state or local resources (sections 135.325 - 135.339, RSMo). The following material instructs staff in cooperating with the Missouri Department of Revenue in determining if a family may claim the tax credit.

Statutory Requirements

This tax relief law became effective January 1, 1988, (last revised August 28, 2004), and sets forth the following requirements:

A. Definitions

1. Nonrecurring adoption expenses - Reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a special needs child and which are not incurred in violation of federal, state, or local laws.

2. Children who are residents or wards of a resident of this state at the time the adoption is initiated – The child must reside in Missouri or be under the custody of a resident of Missouri at the time the adoption is initiated in order to qualify for \$2 million of the tax credit.

Internationally adopted and children adopted from another state do not meet this criterion, because they are not residents of this state at the time their adoption is initiated, regardless of where their adoption is finalized. If internationally adopted, or children adopted from another state meet special needs criteria they could qualify for the remaining \$2 million in tax credits allowed by the statute.

3. Handicap - A mental, physical, or emotional impairment that limits one or more major life activity, whether the impairment is congenital or acquired by accident, injury or disease, and is verified by medical findings.

4. Special needs child - A child who meets the following criteria:

- a) Has a specific factor or condition such as ethnic background, age, membership in a minority or sibling group, medical condition, or handicap about which it is reasonable to conclude that the child cannot be easily placed for adoption;
- b) Except where it would be against the best interest of the child because of significant emotional ties with the prospective adoptive parent(s) while in their care as a foster child, a reasonable, but unsuccessful effort has been made to place the child; and,

- c) The Children's Division, a child-placing agency, or the juvenile court has determined that the child cannot be returned to the parents.

Related Subject: Section 4, Chapter 30.5.D, Child's Eligibility Criteria for Adoption or Legal Guardianship Subsidy.

B. Limitations - Adoptive parent(s) may **not** claim a tax credit if:

1. The nonrecurring adoption expenses were paid through funds received under a federal, state, or local program **and their expenses did not exceed what was covered by those programs**;
2. The child is over age 18 at the time of adoption unless the child has a condition which limits his ability to live independently; or
3. For any amount of the tax credit carried forward (for up to five (5) years as allowed in section 135.333, RSMo) if the juvenile court temporarily or finally relieves the adoptive parent(s) of custody of the child.

C. In administering this law, the Children's Division is responsible for the following activities:

1. Certifying a child's eligibility as a special needs child;
2. Certifying for all special needs adoptions that nonrecurring adoption expenses were not reimbursed by federal, state or local funds; and
3. Completing the appropriate parts of the Missouri Department of Revenue Adoption Tax Credit Claim (Form ATC) when presented by the adoptive parent(s).
4. **Develop an Adoption Tax Credit File for each tax year. This file is to be maintained by a designated staff person in each county office. This file is to be entitled, "Adoption Tax Credit FY__". A copy of the ATC Log is to be attached to the front, inside cover of the file. All signed ATC forms are to be logged onto this form, including forms that were submitted for children who have been in the custody of the Children's Division.**

NOTE: The most current version of the Form ATC and its instructions can be found on the Internet on the Missouri Department of Revenue's web site at <http://www.dor.state.mo.us/tax/misc/taxcredit/atc.htm>.

Procedural Requirements

The adoptive parent must have the entire (with the exception of Part D and possibly Part E) ATC form completed prior to the Children's Division providing assurances and signatures.

An Adoption Tax Credit file for each tax year is to be developed and maintained by a designated staff person in each county office. This file is to be entitled, "**Adoption Tax Credit FY__**". A copy of the ATC Log is to be attached to the front, inside cover of this file. All signed ATC forms are to be logged onto this form, including forms that were submitted for children who have been in the custody of the Children's Division.

A. Procedures for a child in Children's Division custody at time of adoptive placement when the adoptive family chooses to receive the Adoption Tax Credit and chooses not to receive services through the Missouri Adoption Subsidy Program **or their non-recurring expenses exceeded what was provided through subsidy. If their expenses did exceed what was provided in subsidy, they can claim the amount that was in excess of what subsidy covered.**

1. Determine that the child meets all the special needs eligibility criteria as **defined in Section 4, Chapter, 30.5.D of this manual.**

NOTE: The child must meet all of the eligibility criteria to be eligible for the tax credit.

2. Complete Part E of the ATC form if the child meets all the eligibility criteria. If the child does not meet the criteria, confirm this in writing and allow the adoptive parent(s) to provide additional information.
3. Review the expenses listed in Part C by the adoptive parent(s) to determine if any of these were paid through the Missouri Adoption Subsidy Program or any other source other than the adoptive parent(s). If it is determined that some of the expenses were paid **by one of the sources listed above**, the adoptive parent(s) **must** adjust the expenses accordingly before the worker completes Part D. **If the adoptive parent refuses to adjust the expenses, the worker need not complete the form and shall document, in writing to the adoptive parent, why the form was not completed. A copy of this documentation should be kept with the form by the worker, in the corresponding year's ATC file.**

NOTE: Adoption subsidy funds are federal and state funds. Local funds used to offset nonrecurring expenses could include local government or private sources. Staff should explore with the adoptive family or the appropriate agency, if applicable, whether any local funds were used to offset the nonrecurring adoption expenses. Staff may need to review the ZPAY screen in ACTS to determine if the Children's Division previously paid any claimed funds through an adoption subsidy agreement. If you believe payments were made more than a year ago,

staff should review the CS-SA-2 Attachment. The ZPAY Screen retains payment history for one year only.

5. Complete Part D if there are nonrecurring adoption expenses which are eligible for the tax credit.
 6. Return:
 - a) The completed form ATC to the adoptive parent(s); or
 - b) The incomplete form ATC to the adoptive parent(s) with a written explanation of why the Children's Division cannot certify the child's **special needs** eligibility and/or that no federal, state or local funds were used to pay the claimed nonrecurring adoption expenses.
 7. File a copy of form ATC with all supporting material and correspondence in the adoptive parent(s) case record.
 8. Log this ATC form and the required information on the ATC Log, located in the front inside cover of the corresponding year's Adoption Tax Credit File.
- B. Procedures for a child who was **not in Children's Division's custody** at the time of adoptive placement.
1. Refer:
 - a) The adoptive parent(s) to the juvenile court for children independently placed for assistance in determining the child's special needs eligibility (Part **E** of the ATC form); or
 - b) The adoptive parent(s) to the appropriate licensed child placing agency, DYS or DMH for assistance in determining the child's special needs eligibility (Part **E** of the ATC form);

NOTE: If the licensed child placing agency, or the court, which finalized the adoption, is not locally accessible to the family, it is not necessary to refer the adoptive family to one of these services. **The Division may complete part E of the ATC form if the child meets the special needs eligibility criteria** in order to save the family from tracking down the agency or court. The family should provide some form of documentation supporting this such as **medical documentation**, the child's birth certificate, the foreign adoption decree or papers from immigration.

2. Review the expenses listed in Part C by the adoptive parent(s) to determine if any of these were paid through the Missouri Adoption Subsidy Program or any other source other than the adoptive parent(s). If it is determined that some of the expenses were paid by one of the sources listed above, the adoptive parent(s) must adjust the expenses accordingly before the worker completes Part D. If the adoptive parent refuses to adjust the expenses, the worker need not complete the form and shall document, in writing to the adoptive parent, why the form was not completed. A copy of this documentation should be kept with the form by the worker, in the corresponding year's ATC file.

NOTE: Workers will need to review the ZPAY screen in ACTS to determine if the Children's Division previously made payment through an adoption subsidy agreement, particularly for children previously in the custody of a licensed child placing agency, DYS or DMH. If you believe payments were made more than a year ago, staff should review the CS-SA-2 Attachment. The ZPAY screen retains payment history for one year only.

3. Complete Part D of the ATC form to certify that no federal, state or local funds were expended to meet the nonrecurring adoption expenses listed in Part C.
4. Make a copy of form ATC and retain for five (5) years with related correspondence in a file for "Adoption Tax Credit FY__" requests.
5. Log this ATC form and the required information on the ATC Log, located in the front inside cover of the corresponding year's Adoption Tax Credit File.
6. Return:
 - a) The completed form ATC to the adoptive parent(s); or
 - b) The incomplete form ATC to the adoptive parent(s) with a written explanation of why the Children's Division cannot certify the child's eligibility and/or that no federal, state or local funds were used to pay for nonrecurring adoption expenses.
7. Retain individual case information for five (5) years from the date of certification in the "Adoption Tax Credit FY__" file. Destroy forms after five (5) years.